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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 EDWARD BOOTH,

12 Petitioner,

13 v.

14 DARREL ADAMS, Warden,

15 Respondent.  
16

Civil No. 10-2361 JLS (CAB)

**ORDER:**

**(1) GRANTING APPLICATION TO  
PROCEED IN FORMA PAUPERIS and**

**(2) DISMISSING CASE WITHOUT  
PREJUDICE**

17 Petitioner, a state prisoner proceeding pro se, has submitted a Petition for Writ of Habeas  
18 Corpus pursuant to 28 U.S.C. § 2254.

19 **APPLICATION TO PROCEED IN FORMA PAUPERIS**

20 Petitioner has submitted a request to proceed in forma pauperis and has \$0.00 on account  
21 at the California correctional institution in which he is presently confined. Petitioner cannot  
22 afford the \$5.00 filing fee. Thus, the Court **GRANTS** Petitioner's application to proceed in  
23 forma pauperis, and allows Petitioner to prosecute the above-referenced action as a poor person  
24 without being required to prepay fees or costs and without being required to post security. The  
25 Clerk of the Court shall file the Petition for Writ of Habeas Corpus without prepayment of the  
26 filing fee.

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**FAILURE TO NAME PROPER RESPONDENT**

Review of the Petition reveals that Petitioner has failed to name a proper respondent. On federal habeas, a state prisoner must name the state officer having custody of him as the respondent. Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll. § 2254). Federal courts lack personal jurisdiction when a habeas petition fails to name a proper respondent. See id.

The warden is the typical respondent. However, “the rules following section 2254 do not specify the warden.” Id. “[T]he ‘state officer having custody’ may be ‘either the warden of the institution in which the petitioner is incarcerated . . . or the chief officer in charge of state penal institutions.’” Id. (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note). If “a petitioner is in custody due to the state action he is challenging, ‘[t]he named respondent shall be the state officer who has official custody of the petitioner (for example, the warden of the prison).’” Id. (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee’s note).

A long standing rule in the Ninth Circuit holds “that a petitioner may not seek [a writ of] habeas corpus against the State under . . . [whose] authority . . . the petitioner is in custody. The actual person who is [the] custodian [of the petitioner] must be the respondent.” Ashley v. Washington, 394 F.2d 125, 126 (9th Cir. 1968). This requirement exists because a writ of habeas corpus acts upon the custodian of the state prisoner, the person who will produce “the body” if directed to do so by the Court. “Both the warden of a California prison and the Director of Corrections for California have the power to produce the prisoner.” Ortiz-Sandoval, 81 F.3d at 895.

Here, Petitioner has incorrectly named “Darrel Adams,” as Respondent. In order for this Court to entertain the Petition filed in this action, Petitioner must name the warden in charge of the state correctional facility in which Petitioner is presently confined or the Director of the California Department of Corrections. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam).

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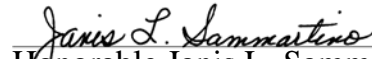
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**ORDER**

Accordingly, the Court **GRANTS** Petitioner's request to proceed in forma pauperis, and **DISMISSES** the Petition without prejudice due to Petitioner's failure to name a proper respondent. To have this case reopened, Petitioner must file a First Amended Petition which cures the pleading deficiencies noted above no later than **January 17, 2011**. *The Clerk of Court is directed to send Petitioner a blank First Amended Petition.*

**IT IS SO ORDERED.**

DATED: December 8, 2010

  
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Honorable Janis L. Sammartino  
United States District Judge